

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF THE CITY OF NORWALK, CALIFORNIA

These comments are filed by the City of Norwalk, California, in support of comments filed by the National League of Cities ("NLC") and by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NLC and NATOA, Norwalk is confident that local governments can issue appropriate local franchises for new video service providers on a timely basis, just as they have for established cable service providers. In support of this conclusion, we are informing the Commission about the facts of video franchising in this community.

Cable Franchising in the City of Norwalk

Community Information

Norwalk is an incorporated city under California law with a population of approximately 110,000. Our franchised cable operator is Charter Communications Entertainment II, L.P., dba Charter Communications. Our community has negotiated cable franchises since the 1970s.

Our Current Franchise

Charter Communications currently operates and maintains its cable system in the City of Norwalk under a nonexclusive franchise agreement dated January 6, 1997. The initial term of the franchise was seven years, with an additional three-year extension to be granted upon the cable operator's completion of a 750 MHz fiber optic upgrade. That upgrade was successfully completed, and the three-year extension became effective. The current franchise will expire on January 5, 2007.

The 1997 franchise agreement references Chapter 18.2 of the Norwalk Municipal Code, which is titled "Cable Television System Franchise." After renewal negotiations with Charter Communications concluded in late 1997, the City Council adopted a comprehensive, updated ordinance that is titled the "Telecommunications Regulatory Ordinance." Although this ordinance will apply to any new cable television service

provider that desires to obtain a franchise from the City, it does not supplant Chapter 18.2 of the Municipal Code, which is referenced in the 1997 franchise agreement as governing the rights and obligations of the parties.

Both the 1997 franchise agreement and Chapter 18.2 provide the City with regulatory authority relating to the following matters that are typically deemed to be of concern to local franchising authorities:

1. The City's ability to collect a 5% franchise fee on the cable operator's annual gross receipts. These franchise fees are payable in quarterly installments.
2. The cable operator's obligation to maintain insurance, including comprehensive general liability insurance in the sum of \$1 million.
3. The cable operator's obligation to establish and maintain a security fund in the sum of \$100,000 to guarantee performance of the cable operator's obligations under the franchise agreement.
4. The City's ability to manage its public rights-of-way within which the cable operator constructs and maintains its facilities, including the issuance of all permits that are required by local ordinances.
5. The City's ability to require that the cable operator provide at least one outlet and basic cable service to each public facility, including public school buildings. Public school buildings and library facilities are also entitled to receive cable modem equipment and high-speed Internet services without charge.
6. The City's ability to require compliance with specified system design and performance requirements, including the cable operator's maintenance of a studio for the production of local governmental, educational, and public affairs programming.
7. The cable operator's obligation to provide emergency alert capability, including the ability to interrupt and cablecast an audio message on all channels simultaneously at a location specified by the City.
8. The cable operator's obligation to provide "parental control locks," to comply with the FCC's Technical Standards, and to maintain a specified repair response capability for the protection of subscribers.
9. The City's ability to enforce the cable operator's obligation to provide support for local programming, including two channels for local governmental access purposes, one additional channel for local educational programming, the video-taping of school district meetings, technical assistance and equipment for the coverage of up to four community events each year, and the payment of \$10,000 per year in support of the governmental access channels.

10. The City's ability to enforce provisions that require adherence to equal employment opportunity programs.

11. The City's ability to impose and to enforce a variety of customer service and protection standards, including those relating to privacy rights, prior consent to enter upon private property, restrictions on the sale of subscriber lists, the maintenance of a local business office, prompt response to calls for repairs and disposition of customer complaints, notices to subscribers of procedures for reporting and resolving complaints, and prior notice to subscribers of planned interruptions of the cable system.

12. The City's ability to require the cable operator to offer reduced rates for basic cable service and expanded basic cable service to subscribers who qualify under City standards as low-income seniors and handicapped persons.

13. The City's ability to require the cable operator to prepare, submit, and maintain records and reports, including books, records, maps, plans, service complaint logs, performance test results, and similar documents relating to the operation of the cable system.

14. The City's ability to revoke the franchise or to impose liquidated damages for breach of material obligations of the franchise agreement, subject to prior written notice, an opportunity to cure the breach, and, if necessary, a hearing before the City Council with regard to any proposed revocation or imposition of liquidated damages.

The Franchising Process

Under the law, a cable franchise constitutes a contract between the local government, operating as the local franchising authority, and the cable operator. As with other contracts, its terms are negotiated. Under the Federal Cable Act, it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. Whether requested by the local government or offered by the cable operator, once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations that are binding upon the parties.

The City's regulatory ordinance, which is incorporated in the current franchise agreement, states that if the Federal Communications Commission, the California Public Utilities Commission, or any other federal or state body or agency exercises any paramount jurisdiction over the subject matter of any franchise granted under that ordinance, then, to the extent that jurisdiction preempts or precludes the exercise of similar jurisdiction by the City, the City's jurisdiction will cease.

Competitive Cable Systems

Although competitive video service providers have requested and obtained cable television franchises in several Southern California communities, the City of Norwalk has never been approached by a competitive provider to provide video service. In our

case, local cable franchising requirements cannot be characterized as a "barrier to entry," because no new entrants have requested a franchise to provide cable services.

Conclusions

The local cable franchising process functions well in the City of Norwalk. As the above information indicates, we are experienced in working with cable providers to ensure that the needs of the local community are met and that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that cable operators may obtain access to the public rights-of-way in a fair and even-handed manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner that complies with local requirements. Local cable franchising also ensures that our community's specific needs are met and that the interests of cable subscribers are protected.

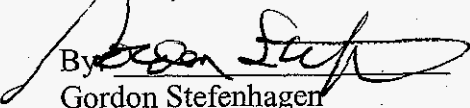
Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. The creation of a new federal bureaucracy in Washington is not required in order to address matters that are solely of local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks, local emergency alerts, etc.) will be available to meet local needs. These factors are equally as applicable to new entrants as they are to existing providers.

The City of Norwalk therefore respectfully requests that the Commission refrain from interfering with local government authority over cable franchising or otherwise impairing the operation of the local franchising process, as set forth under current federal law, with regard to both existing cable service providers and new entrants.

Respectfully submitted,

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By 
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